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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,680	02/25/2002	Donald Verna	PMP-204-A	3041

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Andrew R. Basile
Young & Basile, P.C.
Suite 624
3001 West Big Beaver Road
Troy, MI 48084

EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 04/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/082,680

Applicant(s)

VERNA, DONALD

Examiner

Frank Vanaman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 8-10 and 12-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-10, 12-18, 20-24 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Feb 20, 2004 has been entered.

Claims 1-4, 8-10 and 12-24 are pending. Claims 20-24 are newly added.

Claim Objections

2. Claim 19 is objected to for the following informality: on line 4 (the second line on page 5 of the amendment), it appears as though "the assembled member" should be either --each assembled member-- or --the assembled members--.

Claim Rejections 35 USC 112

3. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 24, line 1, "the side access openings" lack a clear antecedent basis (note claim 20).

Claim Rejections 35 USC 103

4. The pertinent portions of Title 35 USC applicable to the following rejections can be found in a previous office action.

5. Claims 1-3, 17 and 20-24 are rejected under 35 USC 103(a) as being unpatentable over Lutz (DE 38 15 990, cited previously). Lutz teaches a dolly made from four assembled corner members (2) interconnected by a tubular frame (3/4) which may receive a member having a rectangular shape, the corner members including upper (6) and lower (5) members fastened to one another with threaded fasteners (col. 2, lines 31-36) and provided with recesses so that the fastener heads are below the top surface of the upper member. Each upper and lower member has an inner hollow portion, the upper member may be provided with a pair of walls (8) which extend along the edges of the member, traversing the width continuously to and from respective ends, and thus including a center portion of the member in both lateral and longitudinal

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direction, to the breadth claimed; the upper member also being optionally provided with a rectangular groove (10) having ramped portions and a lowermost portion (at the enter thereof), the outer lower surface of the lower member including a mounting location for the top portion of a caster (figures 2, 4, 5-- figures 4 and 5 illustrating an edge of the caster mounting plate), upper and lower members having access apertures into which the tubular frame members are inserted, including through channels (e.g., those channels with open ends shown at the right side of the embodiment illustrated in figure 1) and channels which include means for limiting the travel of the inserted members (e.g., the front facing channel of the rear corner members shown in figure 1, and the rear facing channel of the front corner members shown in figure 1), the limiting element formed so as to extend into the channel (in that if not provided the channel would extend through to a side of the orthogonal channels having two open ends).

As regards claim 1, the reference to Lutz fails to specifically teach the corner members as being made from a plastic material. Plastics are very old and well known in the manufacturing arts for their light weight and resistance to corrosion, and as such, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the corner members of the cart of Lutz from plastic for the purpose of facilitating a lightweight cart which does not corrode or rust easily.

As regards claims 3 and 20, the reference to Lutz fails to specifically teach an embodiment including both a groove and upstanding wall portions. In view of Lutz teaching both these embodiments (see figures 4 and 5), however, it would not be deemed to be beyond the skill of the ordinary practitioner to construct a corner portion having both features, for example, for the purpose of insuring multifunctional use from a single cart.

6. Claims 4, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz in view of Liu (US 5,695,205). The reference of Lutz is discussed above and fails to teach the caster wheel as comprising a yoke, and a center post, wherein the center post is disposed in an aperture in the lower face of the lower corner member, the aperture extending into an internal dowel. Liu teaches a plastic wheeled carrier

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including casters (40) having a yoke portion and an upstanding post (not separately referenced), wherein the caster post is inserted into an aperture (in element 30, see figure 5 proximate numerals 301, 302), the aperture being provided with an internal dowel. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a caster with an upstanding post, and a receiving aperture with internal dowel as taught by Liu to the corner members taught by Lutz for the purpose of allowing lower cost casters to be easily and quickly inserted and removed on the dolly of Lutz, facilitating construction with commonly available elements, and facilitating a faster assembly.

7. Claims 10, 15, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz in view of Liu, and further in view of Roby et al. (US 4,077,644).

Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz in view of Roby et al.

As regards claims 10, 15, 16 and 18, the reference of Lutz as modified by Liu fails to specifically teach the fastener apertures as including internal dowel elements. As regards claims 12-14 the reference of Lutz fails to specifically teach the provision of reinforcing dowels which receive the fasteners.

Roby et al. teach a plastic cart construction wherein portions which are generally otherwise hollow are fastened together by a threaded fastener or bolt (36) which extends through an aperture in a dowel portion (see 35, 34 in figure 5, and 30 in figure 6). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide reinforcing dowels as taught by Roby and hollow out a further interior portion of the corner members of the dolly of Lutz (claims 12, 13) or of the corner members of the dolly of Lutz as modified by Liu (claim 10), for the purpose of providing a support which adequately accommodates the threaded fastener (e.g., Roby et al.'s element 36), while allowing the remainder of the structure to be substantially hollow, thus retaining strength while reducing weight, resulting in an advantageously lighter cart.

As further regards claim 16, the reference of Lutz as modified by Liu and Roby et al. fails to teach that the groove (10) has an 'L' shape. To adjust the shape of an engaging element for the purpose of engaging a particular mating element or portion is old and well known, and as such it would have been obvious to one of ordinary skill in the art at the time of the invention to adjust the shape of the groove (10) taught by Lutz to be an 'L' shape, for example so as to provide a resting groove for an L-shaped corner flange on the bottom of an element to be received in the cart.

Allowable Subject Matter

8. Claim 19 is allowable except for being objected to for a minor informality as set forth above. The examiner notes that the currently written claim 19 does not include each and every limitation which was previously identified as being a part of the allowable claim.

Response to Comments

9. Applicant's comments, filed with the amendment, have been carefully considered. As regards the provision of a projection into the channel, the closures provided by Lutz at the ends of the front facing channel of the rear corner members shown in figure 1, and the rear facing channel of the front corner members shown in figure 1 constitutes a projection to the breadth such limitation is currently claimed, in that lacking this element, there would be no stop provided, and these channels would extend through to the channels with open ends shown at the right side of the embodiment illustrated in figure 1, for example. As regards the provision of a lip which traverses the width of "a center portion" of the upper member, please note that this limitations is met to the breadth claimed - in this case the lip traverses center portions of the lateral and longitudinal edges of the upper member, as noted above. Applicant's reference to the figures is noted, but applicant is reminded that while the claims are interpreted in light of the specification and drawings, unclaimed limitations from the specification (or illustrated in the drawings) are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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10. Please note that it is not proper to interpret a claim based on limitations not recited therein. During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." The court found that applicant was advocating the latter, i.e., the impermissible importation of subject matter from the specification into the claim.). See also In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 703-308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is 703-308-1113.

As of May 1, 2003, any response to this action should be mailed to:

Mail Stop _____
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450,

Or faxed to one of the following fax servers:

Regular Communications/Amendments: 703-872-9326
After Final Amendments: 703-872-9327
Customer Service Communications: 703-872-9325

F. VANAMAN
Primary Examiner
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3/29/04